

## TAX DIGEST

VOL 4

## INCOME TAX (COMMON REPORTING STANDARD) REGULATION



## INTRODUCTION

Tax Authorities in Nigeria have been and will always be looking for means to avoid or reduce profit shifting, base erosion and to also get information on the financial accounts of individuals and corporate entities in different jurisdiction, which is not a surprise that Nigeria signed a Common Reporting Standards (“CRS”) Multilateral Competent Authority Agreement (“MCAA”) a few months after the Voluntary Asset and Income Declaration Scheme (“VAIDS”) back in 2017.

The Common Reporting Standard is the means by which the tax authorities locate and tax any offshore taxable income or gains which is suspected to have been hidden in over 105 jurisdictions which are party to the CRS MCAA. The CRS is seen as a “weapon” against tax evasion and a possible increase of revenue generation.

The Federal Inland Revenue Service (FIRS) issued the Income Tax (Common Reporting Standards) Regulations, 2019 (“CRS Regulations”) pursuant to its powers under Section 61 of the FIRS (Establishment) Act, 2007. The CRS Regulations commenced on 1 July 2019 and will apply from calendar year ending 31 December 2019 onwards

The CRS Regulations gives effect to the:

Multilateral Convention on Mutual Administrative Assistance in Tax Matters and the Multilateral Competent Authority Agreement (MCAA) on Automatic

Exchange of Financial Information (AEOI) signed by the Federal Republic of Nigeria on 17 August 2017;

Common Reporting Standards (CRS) and its Commentaries contained in the Standard for AEOI in Tax Matters approved by the Organization for Economic Cooperation and Development (OECD) on 15 July 2014.

The CRS Regulations aims to improve international tax transparency and reduce tax evasion among taxable Nigerian residents with income from other jurisdictions.

The FIRS has further published the Income Tax (Common Reporting Standard) Implementation and Compliance Guidelines, 2019 (the CRS Guidelines) to supplement the CRS Regulations.

The CRS Regulations apply to Nigeria Financial Institutions

(NFIs) and Nigeria Insurance company, which are defined by the CRS Guidelines as:

- Custodial Institutions – Businesses that hold financial assets (equity and debt) for customers for example, asset managers etc. 20% or more of the gross income of the business for the last three years or as at year end should be attributable to custodial services
- Depository Institutions – Institutions that accept deposits in the ordinary course of business
- Investment Entities – Businesses that provide portfolio management, trade in money market or manage

financial assets or monies on behalf of client

- Specified Insurance Companies – This is an Insurance company (or the holding company of an Insurance company) obligated to make payments under an insurance contracts with a cash value or under an annuity contract.

The key provisions of the CRS Regulations are highlighted as follows:

#### SCOPE: COMMON REPORTING STANDARD REGULATION



CRS foresees to be specific to Nigeria with respect to Financial Institutions' implementation and compliance with AEOI requirements regarding the due diligence procedures with respect to financial accounts and the reporting of financial account information to the FIRS that Financial Institutions shall comply with when implementing and applying the Guidelines; and requirements with respect to the effective implementation of the CRS and its Commentaries in Nigeria.

#### DUE DILLIGENCE REQUIREMENT

Non-Financial Institutions (NFI) are required to establish, maintain and document due diligence procedures to identify Reportable Accounts maintained by the Institution. Information

with respect to a Reportable Account must be reported annually in the calendar year following the year to which the information relates. The due diligence procedures entail review of all pre-existing accounts to determine Reportable Accounts, determine low and high value accounts which are reportable, obtain self-certifications for new and existing accounts, perform residence test for lower value accounts, among others. The CRS Guidelines contains further details on specific due diligence procedures.

Although the CRS Regulations permits NFIs to engage third-party service providers to fulfil their reporting and due diligence obligations, these obligations remain those of the NFIs.

#### REPORTING REQUIREMENT



NFIs are obligated to file certain information on Reportable Accounts maintained during the year ended 31 December 2019 and subsequent calendar years, with the FIRS. Information to be reported by NFIs include ***name, address, tax identification number, place of birth, account balance/value of reportable persons, gross total amount of interest paid into each account during the year and other information specified in the CRS Guidelines.*** Where a Reporting Financial Institution has identified no Reportable Account in a year, the Regulations requires such Institution to file an Information Return with the FIRS disclosing that fact. Although the CRS Regulations states that CRS Returns are to be filed electronically using technology approved or provided by the FIRS, the Guidelines specify that the returns should be in accordance with the CRS schema which is the extensible mark-up language.

The due date for submission of returns is 31 May of the year following the calendar year to which the Returns relate. As such, NFIs would be required to file their first CRS Returns by 31 May 2020. Though the current year report

submission deadline has been extended to 30 September 2020 due to the outbreak of the global pandemic code named covid-19 (corona virus).

In summary RFI's are obligated to perform due diligence to (i) identify Reportable Accounts (RAs), defined broadly as accounts held by tax residents of any jurisdiction with which Nigeria has a CRS exchange relationship; and (ii) collect the financial account information indicated above. Thereafter, RFI's must (iii) report the collected information to the FIRS in an annual information return due on 31 May of the year succeeding the year to which the information relates.

#### RECORD KEEPING REQUIREMENT

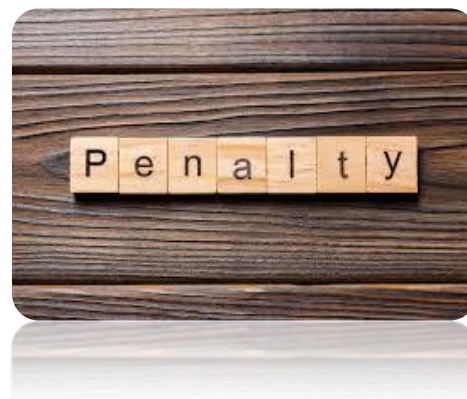


NFI's are required to keep records of documents obtained or created for the purpose of complying with the Regulations. Such records should be kept in electronically readable format for a minimum of six (6) years.

#### PENALTY FOR NON-COMPLIANCE

The CRS Regulations stipulates onerous penalties for non-compliance. These are:

- Failure to comply with duty or obligation imposed by the CRS Regulations: ₦10 million in the first instance in addition to ₦1 million/month
- Failure by Financial Institution to file information return: ₦10 million in the first instance in addition to ₦1 million/month



- Furnishing false or incorrect information: ₦5 million
- Failure by Financial Institution or any person to comply with the FIRS' requirement in the exercise of its powers: ₦1 million in the first instance in addition to ₦100,000/month
- Failure by Financial Institution to keep records in accordance with the Regulations: ₦1 million in the first instance in addition to ₦100,000/month

#### MATTERS ARISING

The CRS Regulations represents Nigeria's action to domesticate the OECD's Common Reporting Standard. The AEOI/CRS is aimed at ensuring the automatic exchange of information relating to assets and income of citizens, by tax authorities of jurisdictions that have signed up to the MCAA on AEOI. As a result, Nigeria Financial Institutions would be required to submit to the FIRS in specific formats, reports on the financial information of affected citizens/residents of over 105 countries that have signed up to the MCAA on AEOI. The FIRS would, in turn, be required to exchange information obtained with relevant counter-party jurisdictions.

The NFI's would be required to review existing customer accounts, which can be a herculean task, to determine

Reportable Accounts and update customer onboarding procedures to ensure accurate information is captured for CRS reporting. Due to the wide scope of AEOI/CRS reporting, NFIs may need to conduct due diligence procedures on existing customer accounts to identify reportable persons and verify reportable information accordingly. They may also need to acquire the right technology for capturing and reporting information for CRS submissions and train their personnel on

### **AEOI/CRS requirements.**

The adoption of AEOI/CRS in Nigeria will improve tax transparency and prevent cross-border tax evasion through the automatic exchange of information between the FIRS and tax authorities in various jurisdictions. Therefore, affected individuals must ensure accurate reporting of assets and income in their tax returns to the tax authority in the relevant jurisdiction. They also need to accurately provide information on their residence status to the NFIs, as the provision of false records may lead to penalties in the relevant jurisdiction where the irregularity is discovered.

Further, taxpayers who participated in the recently concluded Voluntary Assets and Income Declaration Scheme (VAIDS) may expect relevant tax authorities to engage them where there are inconsistencies between their declarations and information received from participating jurisdictions.

### **Use of Information Exchange**

Though not all the money held in a foreign account by a Nigerian resident is liable to tax in Nigeria. The information will however help the tax authorities to ask important questions. For example if the FIRS receives information that the balance in your bank account in United State grew from zero to \$3million in a certain year, but you have only declared a total income of \$1.5million in Nigeria, they would want to know: where the money in that account came from, if it is from income that should be taxed in Nigeria, and whether you have paid the tax that is due. Ultimately, the information will help the tax authorities figure out if there might be taxable income that has not been declared in Nigeria or otherwise.

### **Benefit of Information Exchange**

Data from the Global forum suggests that information exchange can be a very effective tool in tackling tax evasion and avoidance. For example, 32 countries surveyed by the Global forum reported additional tax

revenues of up to \$2 billion between 2012 and 2014 as a result of information exchange. Apart from catching tax avoiders, information exchange has also been reported to have a deterrent effect. This is why people start to disclose and pay tax on income that they would normally hide because they realise that they could be found out and penalised. The Global forum estimates that this deterrent effect has already increased tax revenues by \$55 billion.

Additional information and list of member countries under the Organization for Economic Cooperation and Development (OECD) can be found on [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency).

## CONCLUSION

With the introduction of CRS rules in Nigeria, financial institutions must take steps to ascertain whether they are RFIs for CRS purposes and, if so, take further steps to understand their obligations and discharge them timeously, accurately, and efficiently. RFIs must ensure they implement the proper due diligence procedures required for the different categories of financial accounts, and that they keep sufficient documentation as required. Failure to do this can lead to penalties, embarrassed clients, and significant reputational damage, all of which can potentially upset investors and other stakeholders. The FIRS must ensure that reported information is handled with utmost confidentiality and that its IT infrastructure is secure. Otherwise, it will not be able to access information on Nigerian residents' offshore accounts, thereby defeating the purpose and rendering the extra compliance burden placed on RFIs unjustifiable.

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